

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5255 of 1995

with

SPECIAL CIVIL APPLICATION No 5362 of 1995

and

SPECIAL CIVIL APPLICATION No 6901 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARAYANBHAI D KADAM
VERSUS
STATE OF GUJARAT

Appearance:

MR RR TRIPATHI for Petitioner in Ist petition
None present for Petitioner in IIInd petition
MR CB DASTOOR for Petitioner in IIIrd petition

MR VB GHARANIA for Respondents in all petitions

CORAM : MR JUSTICE S.K. KESHOTE

Date of decision: 22/04/99

C.A.V. JUDGMENT

1. In all these special civil applications, identical issue has arisen for the consideration of this court and as such these matters are being taken up for hearing together and are being disposed of by this common order.

2. Learned counsel for the petitioners contended that these matters are squarely covered by the decision of this Court given in Sp. C.A. No.2325 of 1994 decided on 30th June, 1994. Copy of this decision of this court is there on the record of this special civil application.

3. Learned counsel for the respondents is unable to show how these matters are not covered by the aforesaid decision of this Court. I have gone through the contents of the special civil application as well as the judgment of this Court on which reliance has been placed by the learned counsel for the petitioners and I am satisfied that these matters are squarely covered by the said decision of this Court.

4. The petitioners in these matters were initially appointed as Ward Servants - Class IV in the operation theatre in the Civil Hospital of the State of Gujarat. Later on they were appointed on the post of Operation Theatre Assistant. The pay scale of this post at the relevant time was of Rs.260-340 which came to be revised to Rs.1150-1500 under the Gujarat Civil Services (Revision of Pay) Rules, 1987 w.e.f. 1-1-1986. The petitioner has come up with the case that though the pay scale of Rs.260-430 of Operation Theatre Assistant was revised to Rs.1150-1500, the pay of the petitioners was fixed in the pay scale of Rs.775-1025 in the revised pay scale.

5. The petitioners prayed for direction to the respondents to revise their pay in the pay scale of Rs.1150-1500 w.e.f. 1-1-1986 with all consequential benefits. The petitioners in the special civil application No.2325/94 decided on 30th June, 1994 were also persons who were initially appointed as Class -IV

employees and later on they were promoted to the post of Operation Theatre Assistant in the pay scale of Rs.260-430. In the revised pay scale rules of 1987, their pay has been fixed in the pay scale of Rs.775-1025 like the petitioners in the present case though that pay scale was revised to Rs.1150-1500. This Court has accepted their case and the relief ha been granted for giving them the pay scale of Rs.1150-1500 w.e.f. 1-1-1986 with all consequential benefits. This case is not distinguishable and in case the relief as prayed for in that case is not granted to the petitioners in these matters then certainly it will amount to judicial discrimination. It is the case of the petitioners that after the judgment of this court in that case, the respondents should have granted the same relief to them but that relief was not granted to them on the ground that they were not the party to that decision. On this ground, if it is correct, the benefit of the revision of pay scale normally should not have been denied. But at the same time it is also expected of the petitioners to remain vigilant in respect of their rights. They know very well that their pay has been fixed in the revised pay scale in Rs.775-1025 instead of Rs.1150-1500 and they should have approached to this Court within reasonable time. But they themselves slept over their rights. They filed this petition in the year 1995. Out of these petitioners, one petitioner has already retired from the services. However, only on this ground of delay, relief of the nature as prayed for by the petitioners normally should not be declined but at the same time, they cannot be permitted to take the actual benefits from 1-1-1986. They approached to this court in the year 1995.

6. In the result, all these special civil applications are allowed. It is hereby declared that the petitioners are entitled to get the revised pay scale of Rs.1150-1500 under the provisions of Gujarat Civil Services (Revision of Pay) Rules, 1987 from 1-1-1986. The petitioners have not taken up their grievance within reasonable time. These special civil applications are filed by the petitioners in this Court on 30th June, 1995, 4th July, 1995 and 2nd August, 1995 respectively. So I do not find any justification to allow the petitioners to get the actual benefit of this revision of pay scale till the date on which the petitioners filed their respective petitions. However, they shall be entitled for the notional benefits. So their pay be fixed in the revised pay scale of Rs.1150-1500 notionally from 1-1-1986 and from the date on which these petitions have been filed by the

petitioners they shall be entitled for the actual benefits of this revised pay scale only. Rule is made absolute in the aforesaid terms with no order as to costs.

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